

## PUBLIC NOTICE

### NOTICE OF RULE CHANGE

The United States District Court for the Western District of Virginia gives notice of a proposed new Rule Of Court Authorizing Alternative Dispute Resolution Processes in Civil Cases in Accord with 28 U.S.C. § 651(b).

The proposed new Rule is attached.

The Court will receive and consider comments on the proposed new Rule. Any such comments must be in writing and received no later than June 30, 2007. Comments may be directed to the undersigned at P. O. Box 1234, Roanoke, VA 24006, or by e-mail to [johnc@vawd.uscourts.gov](mailto:johnc@vawd.uscourts.gov).

John F. Corcoran, Clerk

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA**

**RULE OF COURT AUTHORIZING ALTERNATIVE  
DISPUTE RESOLUTION PROCESSES IN CIVIL  
CASES IN ACCORD WITH 28 U.S.C. § 651(b)**

**(A) Availability.** The Court shall offer alternative dispute resolution to all parties in every civil case. Mediation shall be the common and preferred means of alternative dispute resolution. Other means of alternative dispute resolution shall be made available by the Court upon request of all parties, except in those cases in which the alternative form may be prohibited by statute.

**(B) Requests for Referrals.** Alternative dispute resolution shall not be automatically required in every case. Upon joint motion of all parties, the Court shall refer the case for alternative dispute resolution in the form requested by the parties, unless that form is prohibited by statute. If one party makes a unilateral request for referral, the Court may refer the case for alternative dispute resolution in any nonbinding form deemed appropriate by the presiding judge. In any other case, the presiding judge may require the parties to participate in alternative dispute resolution in any nonbinding form permitted by statute and deemed appropriate by the Court.

**(C) Neutrals.** Upon joint motion of all parties, the Court shall refer the case to an alternative dispute resolution resource outside the Court. In all other cases, a United States District Judge or Magistrate Judge shall serve as the neutral when the matter is designated by the presiding judge for alternative dispute resolution.

**(D) Training and Disqualification of Neutrals.** As the primary alternative dispute resolution resource persons for the Court, the magistrate judges shall receive appropriate training as may be offered by the Federal Judicial Center, Administrative Office, or other approved agency. In requesting referral to an outside alternative dispute resolution resource, the parties shall provide to the Court satisfactory documentation as to the qualifications of the designated neutral. Complaints concerning the performance of any neutral, including a magistrate judge, shall be addressed to the Chief United States District Judge. The Court may disqualify from further service any person, including a magistrate judge, who is deemed unqualified to serve as a neutral in a particular case, or in all cases.

**(E) Confidentiality.** All unilateral requests for alternative dispute resolution referral shall be maintained in the strictest confidence by all officers of the Court. Communications and/or information provided during any alternative dispute resolution process shall be kept confidential by all parties and by the neutral. Any information or document which is otherwise produced through a legitimate discovery process is exempted from this confidentiality requirement. Any party may seek entry of a protective order to prevent or limit discovery of any information or document which has become known to the opposing party only because of participation in an alternative dispute resolution process.

**(F) Scheduling.** Alternative dispute resolution sessions may be scheduled at the discretion of the parties and the neutral. Alternative dispute resolution shall proceed independently of all other pretrial development in the case. Referral of a case for alternative dispute resolution shall not operate so as to modify or stay any scheduling provisions of any pretrial order. Parties engaged in alternative dispute resolution may apply to the Court for such modifications or stays upon demonstration of exceptional cause.

**(G) Enforceability.** The Court will not assist in the enforcement of any agreement, settlement, or fee arrangement from any alternative dispute resolution process which is not annexed by the Court. In all other situations, the parties may invoke any of the Court's traditional enforcement mechanisms.

**(H) Coordinator.** The Court shall designate an employee or a judicial officer who is knowledgeable in alternative dispute resolution practices and processes to implement, administer, oversee, and evaluate the Court's alternative dispute resolution program.